

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 NATIONSTAR MORTGAGE LLC,

5 Plaintiff,

6 v.

7 312 POCONO RANCH TRUST and SIERRA
8 RANCH HOMEOWNERS ASSOCIATION,

9 Defendants.

Case No. 2:17-cv-01783-APG-CWH

**ORDER GRANTING MOTION TO
DISMISS**

(ECF No. 14)

10 This lawsuit arises over a dispute regarding the legal effect of a non-judicial foreclosure
11 sale conducted by defendant Sierra Ranch Homeowners Association. Sierra Ranch moves to
12 dismiss, arguing that declaratory relief is a remedy, not an independent claim. Sierra Ranch also
13 asserts that there is no justiciable controversy between it and plaintiff Nationstar Mortgage LLC
14 because Sierra Ranch claims no interest in the property that is adverse to Nationstar.

15 Nationstar responds that it seeks a declaration that the foreclosure sale Sierra Ranch
16 conducted is void, and success on that request would reinstate Sierra Ranch's superpriority lien
17 on the property, making Sierra Ranch a necessary party. Nationstar argues it also seeks a
18 declaration that Sierra Ranch violated Nationstar's due process rights. Nationstar states that if
19 Sierra Ranch admits it will not be prejudiced by an order invalidating its foreclosure sale and if it
20 will disclaim any interest in the property even if the foreclosure sale is set aside, then Nationstar
21 would not contest dismissal.

22 In considering a motion to dismiss, "all well-pleaded allegations of material fact are
23 taken as true and construed in a light most favorable to the non-moving party." *Wyler Summit*
24 *P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not
25 necessarily assume the truth of legal conclusions merely because they are cast in the form of
26 factual allegations in the complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55
27 (9th Cir. 1994). A plaintiff must make sufficient factual allegations to establish a plausible
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1 entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Such allegations
2 must amount to “more than labels and conclusions, [or] a formulaic recitation of the elements of a
3 cause of action.” *Id.* at 555.

4 The parties are familiar with the facts, so I will not set them out here. Although several of
5 Nationstar’s claims seek declaratory relief, it asserts at least one claim to resolve adverse interests
6 in property under Nevada Revised Statutes § 40.010. Under that section, an “action may be
7 brought by any person against another who claims an estate or interest in real property, adverse to
8 the person bringing the action, for the purpose of determining such adverse claim.” I therefore
9 reject the argument in the motion to dismiss that Nationstar has asserted only a remedy and not a
10 claim for relief.

11 However, I grant the motion because Nationstar has not requested relief in a form that
12 would make Sierra Ranch a necessary party. If Nationstar had requested in its complaint to set
13 aside the HOA foreclosure sale, then Sierra Ranch would be a necessary party because its
14 superpriority lien would be reinstated. However, Nationstar’s complaint does not expressly
15 request to set aside the sale. Instead, it requests a declaration that the deed of trust was not
16 extinguished by the HOA sale. ECF No. 1 at 19. It is not clear from this allegation that
17 Nationstar is requesting the HOA sale be set aside. Also, because setting aside the foreclosure
18 sale would reinstate the prior homeowner as the property owner, that homeowner would be a
19 necessary party if Nationstar sought to set aside the sale. Fed. R. Civ. P. 19(a). Yet Nationstar did
20 not sue the prior owner in this case, suggesting it is not seeking to set aside the sale, or at least
21 rendering the complaint ambiguous on this point.

22 I therefore grant Sierra Ranch’s motion to dismiss because Nationstar’s complaint, as
23 currently pleaded, does not adequately allege Sierra Ranch has an adverse interest in the property.
24 However, I grant leave to amend. *See* Fed. R. Civ. P. 15(a). If Nationstar truly seeks to set aside
25 the HOA sale, it may amend to add that request. But it must also either add the prior homeowner
26 as a necessary party or show cause why joinder is not feasible. *See* Fed. R. Civ. P. 19(a)(2), (c).

1 IT IS THEREFORE ORDERED that defendant Sierra Ranch Homeowners Association's
2 motion to dismiss (**ECF No. 14**) is **GRANTED**.

3 IT IS FURTHER ORDERED that plaintiff Nationstar Mortgage LLC may file an
4 amended complaint on or before May 18, 2018.

5 DATED this 1st day of May, 2018.



7 ANDREW P. GORDON
8 UNITED STATES DISTRICT JUDGE
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